SUPREME COURT, U. S.
FILED
OCT 2 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 634

ALLIE REYNOLDS, ETC.,

Petitioner,

—against—

JAMES P. BUNNING, RICHARD HALL, CHARLES SEGAR and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS BUNNING, HALL AND SEGAR IN OPPOSITION

JOHN H. MORSE,
Attorney for Respondents Bunning, Hall and Segar
One Chase Manhattan Plaza,
New York, N. Y. 10005

EDWARD O. BYRNE,
Of Counsel.

October 2, 1970

INDEX

	PAGE
TABLE OF AUTHORITIES	i
JURISDICTION	1
FURTHER GROUNDS FOR DISMISSAL OF PETITION	2
STATEMENT	3
ARGUMENT:	
I. THIS PETITION SHOULD BE DISMISSED BECAUSE SUMMARY JUDGMENT WAS PREDICATED ON INDEPENDENT GROUNDS NOT RAISED BY THE PETITION	5
II. THE PETITION SEEKS TO REVIEW QUESTIONS EITHER DECIDED IN CONFORMITY WITH STATE LAW OR NOT RAISED BELOW	6
A. The New York Statute of Frauds Was Correctly Applied	6
B. The New York Parol Evidence Rule Was Correctly Applied	7
C. Reynolds' Question Number 3 is not Properly Before This Court	8
D. Courts Cannot Create Equitable Rights to Increased Pension Benefits	8
CONCLUSION	9

TABLE OF AUTHORITIES

CASES:	
Boylan v. *United States*, 257 U. S. 614 (1921)	2
Crabtree v. *Elizabeth Arden Sales Corp.*, 305 N. Y. 48, 110 N. E. 2d 551 (1953)	7
Department of Banking v. *Pink*, 317 U. S. 264 (1942)	2,

PAGE

Fogelson v. *Rackfay Const. Co.*, 300 N. Y. 334, 90 N. E. 2d 881 (1950) 7, 8

Hurd v. *Illinois Bell Tel. Co.*, 136 F. Supp. 125 (N. D. Ill. 1955), *aff'd*, 234 F. 2d 942 (7th Cir.), *cert. denied sub. nom. Seybold* v. *Western Electric Co.*, 352 U. S. 918 (1956) 9

Mitchill v. *Lath*, 247 N. Y. 377, 160 N. E. 2d 646 (1928) 7, 8

Sessions v. *Southern California Edison Co.*, 118 P. 2d 935 (Cal. Ct. App. 1941) 9

Toledo Scale Co. v. *Computing Scale Co.*, 261 U. S. 399 (1923) 2

STATUTES:

New York General Obligations Law § 5-701(1) .. 6

28 U. S. C. § 2101(c) 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 634

ALLIE REYNOLDS, *etc.*,

Petitioner,

—against—

JAMES P. BUNNING, RICHARD HALL, CHARLES SEGAR and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS BUNNING, HALL AND SEGAR IN OPPOSITION

This Brief in opposition to Allie Reynolds' petition for a writ of certiorari is submitted on behalf of respondents Bunning, Hall and Segar, the only defendants served with process below.

Jurisdiction

This Court does not have jurisdiction because the petition was not filed within ninety days after entry of the judgment sought to be reviewed as required by 28 U. S. C. § 2101(c), and the petition should therefore be dismissed as untimely. The judgment of the Court of Appeals was entered on May 18, 1970, and Reynolds concedes that "no rehearing or extension of time to petition for certiorari

was sought". (B. 2.*) The petition, however, was not filed until September 2, 1970, 14 days too late to give this Court jurisdiction. *See Department of Banking* v. *Pink*, 317 U. S. 264 (1942); *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 418 (1923).

Reynolds erroneously asserts (B. 2) that the judgment was entered on June 25, 1970. That is the date it was docketed in the District Court. The judgment itself recites it was made at a stated term held "on the eighteenth day of May one thousand nine hundred and seventy" (B. at C1), and the notice to the parties from the Clerk of the Second Circuit (Appendix A to this Brief) states that "judgment has been entered today" and such notice is dated May 18, 1970. As stated in *Boylan* v. *United States*, 257 U. S. 614 (1921):

> "[The statutory period] began with the date of the entry of the final judgment of the Circuit Court of Appeals to which the writ of error issued, and not with date of the entry of the judgment in the District Court under the mandate of the Circuit Court of Appeals." *Ibid.*

Further Grounds for Dismissal of Petition

This petition should be dismissed because (1) the summary judgment decision affirmed by the Court of Appeals was predicated on independent grounds not challenged by Reynolds and (2) it seeks review of questions either not raised by the decisions below or not decided in conflict with applicable state law.

---

*The following citation forms are used in this Brief: Reynolds' Brief—"B"; Appendix to Petitioners' Brief below—"A"; and Appendix B to this Brief—"App. B".

Statement

This is a common law action precipitated by amendments effective April 1, 1967, to the Major League Baseball Players Benefit Plan ("Benefit Plan") adopted pursuant to an agreement reached during collective bargaining between the Major League Baseball Players Association and the 20 Major League Clubs (A. 88a).

Those amendments provided, in part, that certain additional pension benefits would be payable upon retirement to those vested members of the Benefit Plan with any active service in the Major Leagues in the preceding 10 years and not already receiving their retirement benefits (A. 88a).

Reynolds, a former major league pitcher who quit playing in 1955, sued on behalf of a class of former baseball players who, like himself, would not be eligible for the additional pension benefits (A. 88a). No claim has been asserted that any person has been deprived of rights under the terms of the Benefit Plan as amended from time to time or the written contracts pursuant to which it has existed.

Reynolds' answers to interrogatories established that the sole basis (other than "general principles of equity") for the claimed right to receive the additional pension benefits was an alleged oral understanding made early in negotiations in 1954 between the club owners and the players involving modification of the pension plan established by the Major League clubs in 1947.* Those negotiations resulted in the signing of two formal written contracts dated October 1, 1954, in which the clubs agreed to fund, for a five-year period beginning in 1957, a new pension plan to be administered by an owner-player pension committee which was

*These interrogatories and Reynolds' answers are set forth in Appendix B to this Brief.

to "study and determine what modifications should be made" in the existing plan including determining "the type of plan, rights, benefits and costs." (B. at F4.) These formal contracts were signed by Reynolds as representative of the American League Players, by Ralph Kiner as representative of the National League Players and by John W. Galbreath and "Hank" Greenberg, as representatives of the National League and American League, respectively (B. at F3, F9). Reynolds, however, claims that an oral "side agreement" was entered into in New York on February 16, 1954, by these four persons on behalf of their respective principals to the effect that "all future increases in benefits would be shared equally by all vested members of the plan, whether active, inactive or retired" (App. B. at B5).

Respondents moved for summary judgment based on Reynolds' admissions, documents conceded as genuine, and facts uncontroverted by Reynolds set forth in the affidavits of "Hank" Greenberg and John W. Galbreath (App. 91a). The late District Judge Herlands granted the motion with respect to the oral agreement because it (i) did not give rise to an enforceable right, (ii) was barred by the New York parol evidence rule, (iii) was barred by the New York statute of frauds, and (iv) was superseded and canceled by a later written agreement dated July 10, 1961.**

By a judgment entered on May 18, 1970, the Second Circuit Court of Appeals affirmed on the basis of Judge Herlands' opinion.

---

*Reynolds had earlier filed a Note of Issue asserting that he had finished his discovery and was in all respects ready for trial (A. 91a).

**Judge Herlands' opinion and an earlier decision of Judge Wyatt (from which no appeal was taken) disposed of other claims made by Reynolds not here involved.

ARGUMENT

I.

THIS PETITION SHOULD BE DISMISSED BECAUSE SUMMARY JUDGMENT WAS PREDICATED ON INDEPENDENT GROUNDS NOT QUESTIONED BY THE PETITION.

Reynolds questions only "the two main grounds relied on" by Judge Herlands (B. 7), not disputing his further holdings that (i) the oral agreement did not give rise to an enforceable right and (ii) a later contract expressly superseded and canceled whatever earlier agreements had been reached.

Reynolds conceded that none of the four negotiators had any power to bind the respective principals, the two Major Leagues and the players of the two Major Leagues, when the oral agreement he seeks to enforce was made* and does not claim that the oral agreement was ever submitted to or approved by those principals (App. B at B1-B5). Thus, Judge Herlands properly held that the oral agreement did not give rise to an enforceable right.

Further, on July 10, 1961, a new written agreement was entered into by the respective principals which continued the Benefit Plan for an additional five-year period and expressly superseded and canceled the earlier agreements (A. 79a-80a). Thus, as Judge Herlands held, any rights Reynolds had to benefit increases under the earlier agreements were extinguished.

Each such holding was a sufficient reason for the granting of summary judgment and, accordingly, this petition should be dismissed.

---

*¶¶ 4, 5 and 8 of Defendants' Statement pursuant to Rule 9(g) of the General Rules of the Southern District.

II.

THE PETITION SEEKS TO REVIEW QUESTIONS EITHER DECIDED IN CONFORMITY WITH STATE LAW OR NOT RAISED BELOW.

A. The New York Statute of Frauds Was Correctly Applied.

Reynolds does not dispute that the New York statute of frauds* is applicable, but he asserts only that Judge Herlands' decision conflicts with New York cases because it held that "writings evidencing the oral agreement, subscribed by the parties or their agents, but dated subsequent to the oral agreement, are of no significance with respect to the enforceabilfty of such agreement" (B. 8).

Reynolds conveniently ignores that the subsequent writings—a notice circulated in 1956 by Retirement Plans, Inc., and a letter written in 1962 by "Hank" Greenberg—were not listed in his answer to interrogatories as writings evidencing the oral agreement. Further, Reynolds made no claim in the District Court that Greenberg's letter satisfied the statute. With respect to the Retirement Plans, Inc., notice before him, Judge Herlands held that it had no significance because it merely summarized certain decisions of the Pension Committee in adopting amendments effective April 1, 1957, which is a far cry from evidencing a contract that, forever in the future, whenever amendments are adopted increasing benefits, all vested members will share equally.

In any event, neither subsequent writing could possibly satisfy the New York statute of frauds which specifically requires the writing to be signed by "the party to be charged therewith or by his lawful agent", because Greenberg in 1962 and Retirement Plans, Inc., in 1957 were not the lawful agents of the parties sought to be charged by the 1954 oral

New York General Obligations Law § 5-701(1).

agreement—i.e., the National League, the American League, the National League Players and the American League Players. Further, *Crabtree* v. *Elizabeth Arden Sales Corp.*, 305 N. Y. 48, 110 N. E. 2d 551 (1953), held that it must be clear that the *parties to be bound* assented to the contents of a subsequent writing before such writing could satisfy the statute. Yet Reynolds at no time has disputed the statements of Mr. Greenberg and Mr. Galbreath that the two leagues never assented to any terms not in the formal written contracts dated October 1, 1954.

B. The New York Parol Evidence Rule Was Correctly Applied.

Reynolds argues that Judge Herlands' decision conflicts with the leading New York cases applying the parol evidence rule, *Mitchill* v. *Lath*, 247 N. Y. 377, 160 N. E. 2d 646 (1928), and *Fogelson* v. *Rackfay Const. Co.*, 300 N. Y. 334, 90 N. E. 2d 881 (1950), because the February 16 oral agreement was in form collateral to and was not inconsistent with the written agreements dated October 1, 1954.

An oral agreement to the effect that all benefits forever in the future must be granted equally to all vested members is in fact inconsistent with a written agreement limited to a five-year period and granting the Pension Committee power to determine the "type of plan, rights, benefits and costs", and Judge Herlands so held.

Moreover, Reynolds' argument utterly ignores the *third* condition set forth in *Mitchill* v. *Lath*, *i.e.*, the oral agreement must be not only collateral in form and not inconsistent with the written agreement but it also

> ". . . must be one that parties would not ordinarily be expected to embody in the writing; or put in another way, an inspection of the written contract, read in light of surrounding circumstances must not

> indicate that the writing appears 'to contain the engagements of the parties, and to define the object and measure the extent of such engagement.' Or again, *it must not be so clearly connected with the principal transaction as to be part and parcel of it.*" 247 N. Y. at 381, 160 N. E. at 647 (emphasis added).

In both *Mitchill* v. *Lath* and *Fogelson* v. *Rackfay Const. Co.* it was found at trial that the defendants had entered into collateral oral agreements which the plaintiffs had relied on in entering into the written agreement. Yet, the Court of Appeals *reversed in both cases and dismissed the complaints* because as a matter of law the subject matter of the oral contracts were sufficiently related to the written contracts to bar enforcement.

C. Reynolds' Question Number 3 is not Properly Before This Court.

The Court of Appeals quite properly ignored Reynolds' claim of "equitable estoppel" because the record below is devoid of any factual basis for a claim that any person relied on the alleged oral promise. Indeed, Reynolds said nothing of such a claim in answer to specific interrogatories which required him to set forth *all* claims being asserted in this action (e.g. App. B. at B1).

D. Courts Cannot Create Equitable Rights to Increased Pension Benefits.

Reynolds' Question 4 assumes the conclusion—the very issue before Judge Herlands was whether the oral "agreement to the contrary" was legally enforceable and a restriction on the Pension Committee.

Because the oral agreement is unenforceable, the issue below was whether former employees had any equitable

right to share in additional pension benefits granted to present employees. In the only cases which we have found involving this question, the courts have held that they do not. *See Hurd* v. *Illinois Bell Tel. Co.*, 136 F. Supp. 125, 150 (N. D. Ill. 1955), 234 F. 2d 942 (7th Cir.), *cert. denied sub. nom. Seybold* v. *Western Electric Co.*, 352 U. S. 918 (1956); *Sessions* v. *Southern California Edison Co.*, 118 P. 2d 935 (Cal. Ct. App. 1941). Thus, Judge Herlands properly dismissed this claim.

The cases cited by Reynolds involving union discrimination against nonunion employees are irrelevant. His class consists of former employees who ceased working more than ten years earlier. Further the cases cited by him holding that pension committees may not arbitrarily interpret the terms of pension plans are irrelevant. This action challenges the policy determination as to what those terms were to be, which was reached during collective bargaining between the employers, the 20 Major League clubs, and the Players Association, the bargaining representative of the present employers.

CONCLUSION

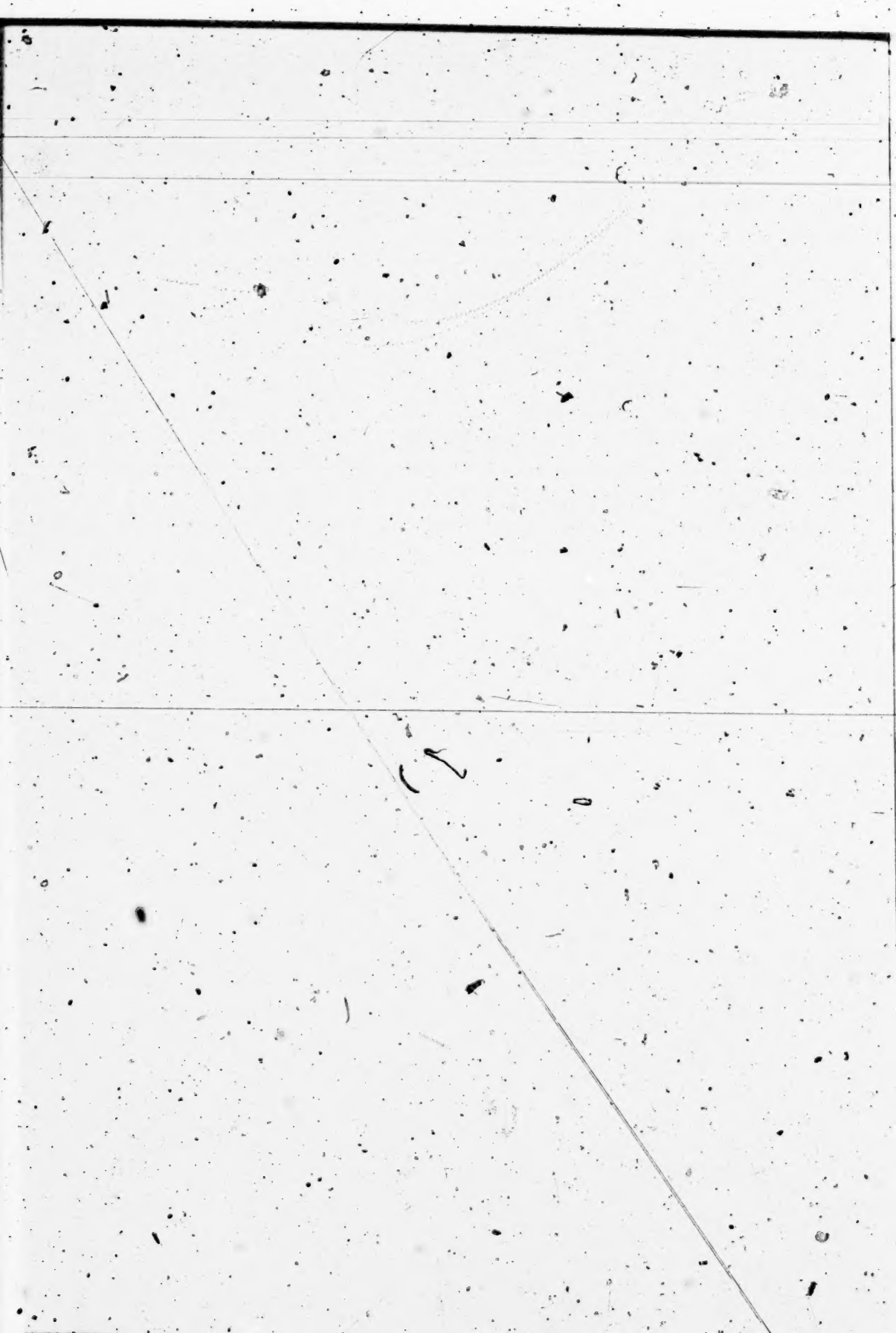
For the foregoing reasons, Reynolds' petition for a writ of certiorari should either be dismissed or denied.

October 2, 1970

Respectfully submitted,

JOHN H. MORSE,
Attorney for Respondents
Bunning, Hall and Segar,
One Chase Manhattan Plaza,
New York, N. Y. 10005

EDWARD O. BYRNE,
Of Counsel.



APPENDIX A

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
United States Courthouse
Foley Square
New York 10007

A. DANIEL FUSARO
Clerk

May 18, 1970

REYNOLDS, ETC. *vs.* GALBREATH, ET AL.	Docket # 34542

Dear Sirs:

The Court has today handed down a decision in the above entitled cause affirming the decision of the district court.

A copy of the opinion will be mailed to you tomorrow.

Additional copies of opinions may be obtained from this office in accordance with § 0.17(7) of the rules of this Court supplementing the Federal Rules of Appellate Procedure.

Judgement has been entered today and a mandate will issue in accordance with Rule 41 of the Federal Rules of Appellate Procedure.

Very truly yours,

A. DANIEL FUSARO
Clerk

APPENDIX B

INTERROGATORY NUMBER 13 OF DEFENDANTS BUNNING AND HALL.

13. With respect to paragraph 35 of the complaint, describe each and every right of the plaintiffs being whittled away, and state the source of each such right.

PLAINTIFF'S ANSWER TO INTERROGATORY NUMBER 13 OF DEFENDANTS BUNNING AND HALL.

13. The rights referred to are the rights of the inactive vested players to share equally with the active players in all increases and benefits and the rights of all players to share in the proceeds of World Series and All Star Games radio and television rights and/or gate receipts. The sources of such rights are the oral agreement dated February 16, 1954, the substance of which is set forth in plaintiff's answer to SEGAR Interrogatory 3d. (3)(B); on press release dated February 16, 1954 [A. 54a]; on memorandum attached thereto [A. 52a-53a], copies of which are annexed hereto; on written memorandum dated March 12, 1954, [A. 71a-74a] copy of which is annexed to plaintiff's answer to interrogatories of defendant SEGAR; and written agreement dated October 1, 1954, copy of which is likewise annexed thereto [A. 68a-70a]. The sources of such rights are also founded on general principles of equity.

INTERROGATORY NO. 4 OF DEFENDANTS BUNNING AND HALL.

4. With respect to yourself and each member of the class of persons that you purport to represent in this action who claims or will claim that any contractual right to share in increased or additional benefits under the Benefit Plan was interfered with by amendments to the Benefit Plan effective April 1, 1967,

(a) state his name and present residence address;

(b) with respect to each and every contract or agreement which he claims gives such a right,

(1) state the date and place where made;

(2) state whether it was written or oral or both, and

(A) to the extent written, state the exact words constituting the entire contract or agreement, the exact words of that portion claimed to give rise to the right, the name and present residence address of each person who signed it, the capacity in which each signed, the party each represented in signing, the name and present residence address of each other person present at the signing, describe each such contract or agreement in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(B) to the extent oral, state the substance of the contract or agreement, the name and present residence address of each person who agreed, the capacity in which each acted, the party represented by each person who agreed, the name and present residence address of each other person present when the contract or agreement was reached, whether any memorandum of the contract or agreement was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(C) state whether it by its terms required approval or ratification by any person* or group of persons, and, if so, separately identify each person or group of persons whose approval or ratification was required; and

(D) state whether it was submitted for ratification or approval to any person or group of persons, and, if so, as to each such submission

(i) state the date and place;

(ii) separately identify each person or group of persons to whom it was made;

(iii) state whether it was oral or in writing or both, and

(*a*) to the extent oral, state the substance of the contract or agreement submitted, the name and present residence address of the person or persons who made the submission, whether any memorandum of it was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(*b*) to the extent written, state the exact words of the contract or agreement submitted, the name and present residence address of the person or persons who made the submission, describe it in a manner suitable for use as a description in a subpoena, state its present location, and

*As used in subparts (b)(2)(C) and (D) of this interrogatory, the word "person" shall include corporations, partnerships, unincorporated associations and business trusts.

identify the person now having custody or control of it;

(iv) state whether it resulted in approval or ratification of the contract or agreement, and, if so, state whether such approval or ratification was oral or in writing or both, and

(*a*) to the extent oral, state the substance of the approval or ratification, whether any memorandum of it was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(*b*) to the extent written, state the exact words of the approval or ratification, describe it in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it.

PLAINTIFF'S SUPPLEMENTAL ANSWER TO INTERROGATORY 4 OF DEFENDANTS BUNNING AND HALL.

4(b) Plaintiff relies on the oral agreement dated February 16, 1954, the substance of which is set forth in plaintiff's answer to SEGAR Interrogatory 3d (3)(B); on press release dated February 16, 1954 [A. 54a], and memorandum attached thereto [A. 52a-53a], copies of which are annexed hereto; on written memorandum dated March 12, 1954, [A. 71a-74a] copy of which is annexed to plaintiff's answer to interrogatories of defendant SEGAR; and written agreement dated October 1, 1954, copy of which is likewise annexed thereto [A. 68a-70a]. The agreements

contained in the memorandum of February 16, 1954, were subject to ratification by the sixteen major league baseball clubs and by the sixteen player representatives, one from each major league club. Such agreements were ratified by the American League Clubs and the National League Clubs at separate meetings held March 12, 1954, and by the representatives of the players on April 11, 1954.

PLAINTIFF'S ANSWER TO SEGAR INTERROGATORY 3d. (3) (B) REFERRED TO IN ANSWERING INTERROGATORY NUMBERS 4 AND 13 OF DEFENDANTS BUNNING AND HALL.

On or about February 16, 1964, [sic] an oral agreement was entered into among the persons whose names and addresses are set forth in "(3) (A)". Messrs. Galbreath and Greenberg represented the National League clubs and American League clubs, respectively, and Messrs. Kiner and Reynolds represented the National League players and the American League players, respectively. The substance of such agreement was that the previously existing pension plan would be continued with certain modifications, that all future increases in benefits would be shared equally by all vested members of the plan, whether active, inactive or retired, that the Major League clubs would allocate 60% of the proceeds from the All Star Game and 60% of the proceeds from the radio and television rights of the World Series Games to the pension fund and the remaining 40% of the proceeds from the All Star Game and the remaining 40% of the proceeds from the radio and television rights of the World Series Games to be retained by the Major League clubs and that a pension committee would be established composed of one representative of each Major League and one active player representative from each Major League to study and determine what modification and amendment should be made in the then existing pension plan.